

A RESOLUTION

01- *z* -0290

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

**A RESOLUTION AUTHORIZING PAYMENT IN THE
AMOUNT OF \$5,391.65 IN SETTLEMENT OF THE CLAIM
OF JAMES F. AND ALICE MADDOX AGAINST THE CITY
OF ATLANTA**

WHEREAS, James F. and Alice Maddox have filed a claim against the City of Atlanta seeking damages arising out of a sewer back up in their property located at 914 Flamingo Drive, SW; and

WHEREAS, property owned by James F. and Alice Maddox has been damaged due to several occurrences of sewer back ups. These back ups were due to the sewer line connecting the mainline and the claimants' home being flat, preventing proper flow away from the property. The City had knowledge of prior to the overflow that occurred on July 9, 2000 which caused the damages addressed in this claim; and

WHEREAS, the City of Atlanta was on notice of said nuisance and yet the City failed to abate said nuisance; and

WHEREAS, inasmuch as the facts disclosed indicate said claim is not based on a claim of negligence, but is a nuisance which is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, the claimants have asserted damages in the amount of \$5,391.65 and have agreed to accept this sum in full and complete satisfaction and settlement of their claim against the City of Atlanta; and

WHEREAS, the City Attorney has recommended that the claim of James F. and Alice Maddox be settled for the sum of \$5,391.65.

THEREFORE, BE IT RESOLVED that the Council of the City of Atlanta, Georgia that \$5,391.65 be paid by the City of Atlanta in satisfaction of any and all claims James F. and Alice Maddox, owners of property located at 914 Flamingo Drive, SW, may have stemming from damages sustained to their property on or about July 9, 2000.

BE IT FURTHER RESOLVED that the Chief Financial Officer be and hereby authorized to pay the above mentioned sum from account number 2J01/529017/T31001.

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0740

Date: February 12, 2001

Claimant /Victim JAMES F. AND ALICE MADDOX
BY: (Atty) _____
Address: 914 Flamingo Drive, SW, Atlanta, Georgia 30311
Subrogation: Claim for Property damage \$ 5,391.65 Bodily Injury \$ _____
Date of Notice: 12/05/00 Method: Written, proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 1998 through 07/09/00 Place: 914 Flamingo Drive, SW
Department Public Works Division: Sewer Operations
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: The claimants' property was damaged due to a series of sewer back ups. The investigation determined that the sewer line connecting the claimants' property to the mainline was flat preventing proper drainage. The City was on notice of the problem prior to the sewer back up that occurred on July 9, 2000 which caused the damages to be paid in this claim.

INVESTIGATION:

Statements: City employee _____ Claimant _____ Others _____ Written _____ Oral _____
Pictures _____ Diagrams _____ Reports: Police _____ Dept Report X Other _____
Traffic citations issued: City Driver _____ Claimant Driver _____
Citation disposition: City Driver _____ Claimant Driver _____

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial _____
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable X
City not involved _____ Offer rejected _____ Compromise settlement _____
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent X Joint _____ Claim Abandoned _____

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ 5,391.65 Adverse _____ Account charged: 1A01 _____ 2J01 X 2H01 _____
Claims Manager:  Concur/date 12-12-01
Committee Action: _____ Council Action _____

RECEIVED DEC 5 2000

M. Mitchell
12/06/00

COUNCIL OF THE CITY OF ATLANTA
MUNICIPAL CLERK
City Hall
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

RE: CLAIM FOR DAMAGES

Today's Date: 12-6-2000

Dear Municipal Clerk:

ENTERED - 12-6-00 - SB
00L0740 - DIANNE MITCHELL

This is to notify the City of Atlanta that I have suffered damages in the amount sum of \$ unspecified property and/or \$ _____ bodily injury for which I contend the City is liable.

1. Date of incident: JUNE 8 2000 2. Time of Incident: _____ 3. Police called: _____
(month/day/year) Yes No

4. Location of incident (including street address): 914 FLAMINGO DR. S.W.

5. Name of your insurance company: Allstate Policy No. _____

6. State what and how incident occurred: SEWAGE BACK-UP - CITY WAS CALLED AND REPAIRS WERE DONE

7. ALL ESTIMATES AND DAMAGES ARE SUBJECT TO INSPECTION. THE MAKING OF FALSE CLAIMS WILL RESULT IN YOUR CLAIM BEING DENIED AND MAY RESULT IN CRIMINAL PROSECUTION!

8. The registered owner must make the claim for vehicle damages, complete the following and attach two (2) estimates of repair and proof of ownership of your vehicle (copy of the current tag receipt or title).

Your vehicle: _____
(Make) (Year) (Tag Number) (Driver's Name)

City vehicle: _____
(Make) (City Driver's Name) (Department/Bureau)

9. Witness: _____
(Name) (Address) (Telephone Number)

10. The acknowledgment of this claim in no way waives the Sovereign immunity of the City of Atlanta, as granted by State law, nor is it an admission of liability on behalf of the City of Atlanta and/or its employee(s).

11. This claim should be mailed immediately to the address shown above.

I HEREBY SWEAR OR AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND CORRECT.

Signature of Claimant

(Print Claimant's Name)

(Address)

(City, State and Zip Code)

(Work Number)

(Home Number)

GENERAL RELEASE AND INDEMNIFICATION

CLAIM NUMBER 000740

\$ 5,391.65

IN CONSIDERATION of the sum of FIVE THOUSAND THREE HUNDRED NINETY-ONE AND 65/100 DOLLARS, to be paid by the CITY OF ATLANTA, the future receipt of which is hereby acknowledged, I do hereby, for myself, my heirs, executors, administrators, and assigns, release and forever discharge said City, its officers and employees, from any and all claims, demands, actions, causes of action, suits, damages, loss and expenses, of whatsoever kind or nature for or on account of anything that has heretofore occurred, and particularly for or on account of a sewer back up

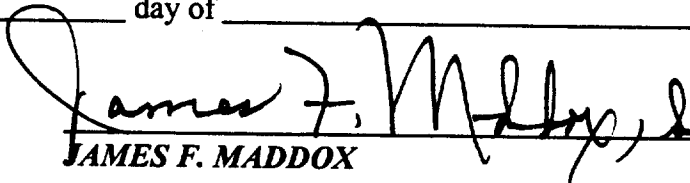
which occurred on or about the 9th day of July, 2000,

at or near 914 Flamingo Drive, SW

It is further understood and agreed that the payment of the above named sum is not to be considered as an admission on the part of the City, its officers, agents, servants or employees, of any liability whatsoever and the undersigned further covenants and agrees to indemnify and hold harmless the City of Atlanta, its officers, agents, servants and employees, from any and all claims, damages or costs which the said City of Atlanta, its officers, agents, servants and employees, may be called upon to make as a result of the event hereinbefore referred to.

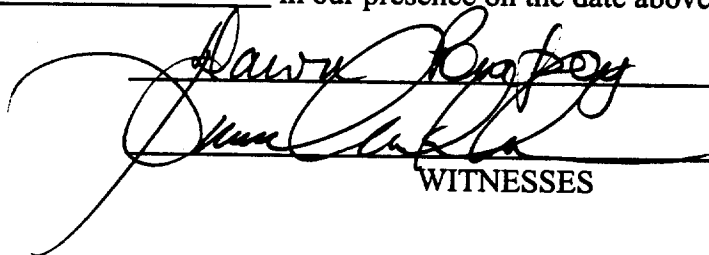
And I now state that the only consideration for my signing this release and indemnification is the payment of the sum stated above; that no other promise or agreement of any kind or nature has been made to or with me by said City or its agents to cause me to sign this release, and that I fully understand the meaning and intent of this instrument.

WITNESS my hand and seal this _____ day of _____, 2001.

 (LS)
JAMES F. MADDOX

The above release was read and explained to, and signed by the said _____

_____ in our presence on the date above written.


WITNESSES